

**COX, WOOTTON, LERNER
GRIFFIN & HANSEN, LLP**
Galín G. Luk (SBN 199728)
Shane B. Kolding (SBN 312948)
900 Front Street, Suite 350
San Francisco, CA 94111
Telephone No.: 415-438-4600
Facsimile No.: 415-438-4601
gluk@cwlfirm.com
skolding@cwlfirm.com

Attorneys for Plaintiff,
DOLPHIN SWIMMING
AND BOATING CLUB

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

In the matter of the Complaint of)	Case No.:
DOLPHIN SWIMMING AND)	
BOATING CLUB, a non-profit)	COMPLAINT FOR
corporation, for exoneration from, or)	EXONERATION FROM, OR
limitation of, liability,)	LIMITATION OF, LIABILITY
)	
Plaintiff.)	[Federal Rule Of Civil Procedure
)	Supplemental Rule F]
)	
)	Admiralty & Maritime Claim

To the Honorable Judge of the United States District Court for the Northern District of California: the Complaint of Dolphin Swimming and Boating Club ["Dolphin Club"], owner of the vessel called ARIAS II [the "Vessel"], hereby seek exoneration from, or limitation of, liability and respectfully alleges as follows:

1. This is an action for exoneration from, or limitation of, liability pursuant to Title 46 U.S.C. §30501, et seq. It is an admiralty and maritime claim within the meaning of Federal Rule of Civil Procedure 9(h) and 38(e) and Supplemental Rule F of the Supplemental Rules for Admiralty or Maritime Claims and Asset Forfeiture Actions of the Federal Rules of Civil Procedure, and is within the admiralty and maritime jurisdiction of the Court pursuant to 28 U.S.C. §1333.

2. At all times hereinafter mentioned the Plaintiff and record owner of the Vessel, the Dolphin Club ["Plaintiff"], was a non-profit corporation, doing business in San

COX, WOOTTON,
LERNER, GRIFFIN, &
HANSEN, LLP
900 FRONT STREET, STE.350
SAN FRANCISCO, CA
94111
TEL: 415-438-4600
FAX: 415-438-4601

1 Francisco, California.

2 3. At the end of the voyage on August 19, 2017, the Dolphin Club was the
3 owner of the Vessel. Plaintiff is therefore entitled to petition for exoneration from, or
4 limitation of, liability, pursuant to 46 U.S.C. §§ 30501, et seq.

5 4. All events and occurrences giving rise to this Complaint occurred in the
6 navigable waters of the United States, off of San Francisco County, California. The Vessel
7 is berthed in San Francisco, California. Therefore, for the forgoing reasons, venue is proper
8 in the United States Court for the Northern District of California.

9 5. At all times material herein, the Plaintiff as owner exercised due diligence to
10 make the Vessel seaworthy and safe and said Vessel was at all relevant times, staunch, tight,
11 strong, properly manned, properly equipped, properly supplied, and in all respects
12 seaworthy and fit for the operational service for which it was engaged in the waters of, and
13 adjacent to, the Pacific Ocean, off the coast of San Francisco, California.

14 6. Plaintiff alleges that on August 19, 2017, boat operator John Grunstad, an
15 employee or volunteer of Plaintiff, who was performing duties on behalf of Plaintiff,
16 operated the Vessel in the San Francisco Bay, where Robert Guy Peluso was swimming
17 laps. The Vessel made contact with Mr. Peluso, causing injury to his right leg.

18 7. The cause or causes of the aforesaid injury occurred without the privity or
19 knowledge of the Plaintiff, and was not caused or contributed to by any fault or negligence
20 on Plaintiff's part, or on the part of anyone for whom the Plaintiff may be responsible.

21 8. Plaintiff alleges that the net value of the Vessel at the end of the voyage on
22 August 19, 2017 was \$40,000.

23 9. There was no freight aboard the Vessel, nor was any freight earned or
24 pending at the end of the voyage on August 19, 2017.

25 10. The Vessel remains in the possession of the Plaintiff. The total value of the
26 interests of the Plaintiff in the Vessel did not exceed \$40,000 at the end of the voyage on
27 August 19, 2017. This value is, or may be, less than the amounts of the claim(s) that the
28 Plaintiff anticipates arising from this occurrence.

11. Plaintiff alleges that the above-described incident and any and all injuries or damages resulting therefrom, were solely and proximately caused by the fault and/or neglect of others.

12. Plaintiff alleges on information and belief that the claimant, Mr. Peluso, was himself negligent in and about the matters alleged in any related claims or actions, and that said negligence contributed directly and proximately to the happening of the subject accident and damages, if any, that may be alleged.

13. Plaintiff alleges that it has a valid, absolute defense to any and all alleged liability arising out the above-described incident, on facts and under maritime and admiralty law.

14. Plaintiff hereby claims the benefit of limitation of liability provided by Title 46 U.S.C. § 30501 et seq., Federal Rule of Civil Procedure F, inclusive, and all Acts amendatory thereof and supplementary thereto, whether named herein or not, and the Plaintiff also hereby claims the benefit of all statutes and acts of the Congress of the United States, whether named herein or not, granting or providing for exoneration from, or limitation of, liability to Vessel owners and owners *pro hac vice*.

15. Plaintiff is informed and believe that no vessel arrest, attachment, or complaint has been filed against the Vessel.

16. Plaintiff has been sued for the above-described injury by Mr. Peluso in the San Francisco Superior Court for the State of California in the action entitled *Peluso v. Dolphin Swimming and Boating Club, et al.*, Case No. CGC-18-564150. Therefore, Plaintiff is informed and believes that claims will be made in this action by persons or entities claiming to have sustained injuries or damages as a result of the subject incident. At the present time Plaintiff does not know the amount of any such claim or claims that may be made for injuries or other losses or damages that may have been sustained.

17. Six months have not elapsed since the Plaintiff received the first notice of claim, in writing, arising from the subject incident.

18. While not in any manner admitting liability for any injuries or damages which

any claimant or representative might allege he, she or it has suffered as a result of the subject incident, and hereby expressing its desire to contest liability, Plaintiff's desire first is to be completely exonerated from any and all such claims and, if not exonerated, in the alternative, to limit their liability, if any, for any and all said claims, to all claimants, to a maximum of liability equivalent to Plaintiff's interests in the Vessel, if any, immediately following the subject incident.

19. Plaintiff is ready, willing, and able to provide and hereby offer to provide, a stipulation with sufficient surety for payment into the Court of the amount or value of Plaintiff's interest in the Vessel immediately following the subject incident, if any there be, together with interest thereon at the legal rate of six percent (6%) per annum, as required by Supplemental Rule (F)(1), whenever the same shall be ordered therein.

20. All and singular the premises are true and within the Admiralty and Maritime jurisdiction of the United States and of this Honorable Court.

WHEREFORE, the Plaintiff prays:

1. That this Court shall issue an injunction and monition, restraining the prosecution of any and all suits or actions, including any suit or proceeding already filed in any court to recover for damages arising out of the aforesaid occurrence and further restraining the commencement or prosecution hereafter of any suit, action or legal proceeding of any nature or description whatsoever except in the present proceeding against the Plaintiff as owner, or against the Vessel, in respect of any claim or claims arising out of the aforesaid occurrence.

2. That the Court in this proceeding adjudge that the Plaintiff as owner, and the Vessel, are to be completely exonerated from liability arising out of the aforesaid incident, and that no liability exists on the part of Plaintiff and the Vessel for any injuries or damages resulting from the aforesaid incident for which this Complaint seeks exoneration from, or limitation of, liability.

3. Alternatively, if the Plaintiff or Vessel shall be adjudged liable, then the Court in this proceeding adjudge that such liability shall be limited to the amount of the

1 value of the interest of the Plaintiff in the Vessel at the end of the voyage on August 19,
2 2017.

3 4. That any monies surrendered, paid, or secured to be paid as aforesaid, be
4 divided among such claimants as may duly prove their claims, saving to all parties any
5 priorities to which they may be legally entitled, and that a decree may be entered
6 discharging the Plaintiff as owner, and the Vessel, from any and all further liability.

7 5. That the Plaintiff may have such other and further relief as this Honorable
8 Court may deem just and proper.

9
10 Date: April 23, 2018

COX WOOTTON LERNER
GRIFFIN & HANSEN LLP
Attorneys for Plaintiff,
DOLPHIN SWIMMING
AND BOATING CLUB

11
12
13
14 By: /s/ Galin G. Luk
Galin G. Luk

15
16
17
18
19
20
21
22
23
24
25
26 COX, WOOTTON,
LERNER, GRIFFIN, &
HANSEN, LLP
27 900 FRONT STREET, STE.350
SAN FRANCISCO, CA
94111
TEL: 415-438-4600
FAX: 415-438-4601
28